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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8
9 Rickey Guy Fugate,

10 Plaintiff,

11 vs.

12 Wickenburg Town Hall, a.k.a., Town of
13 Wickenburg in its official capacity as
14 employers of Wickenburg Police Officers;
15 Detective Kenneth Lutkiewicz, Wickenburg
16 Police Department: in his official capacity;
17 Sergeant Walter A. Brinkman, Wickenburg
18 Police Department, in his official capacity;
19 Sergeant Owen Black, Wickenburg Police
20 Department, in his official capacity; Officer
21 Dan Webb, Wickenburg Police Department,
22 in his official capacity,

23 Defendants.

No. CV-11-00194-PHX-NVW

ORDER

24 Before the Court is Plaintiff Rickey Guy Fugate's "'Amended' Complaint" (Doc.
25 9), filed *in forma pauperis* and therefore subject to screening by this Court; and Fugate's
26 "Motion to Appoint Pro Bono Council [*sic*]" (Doc. 8). The Court screened Fugate's
27 original complaint and dismissed it for lack of detail necessary to state a plausible claim.
28 Fugate's amended complaint provides significant detail, but also demonstrates that he
cannot state a claim for which relief can be granted. Fugate's complaint will therefore be
dismissed with prejudice, his motion for appointed counsel will be denied as moot, and
the case will be closed.

1 **I. LEGAL STANDARD**

2 Permitting Fugate to proceed *in forma pauperis* obligates this Court to screen his
3 complaint under the following standards.

4 **A. Screening Standard**

5 When this Court permits a party to file *in forma pauperis*, the Court “shall dismiss
6 the case at any time if the court determines” that the “allegation of poverty is untrue” or
7 that the “action or appeal” is “frivolous or malicious,” “fails to state a claim on which
8 relief may be granted,” or “seeks monetary relief against a defendant who is immune
9 from such relief.” 28 U.S.C. § 1915(e)(2). While much of § 1915 outlines how prisoners
10 can file proceedings *in forma pauperis*, § 1915(e) applies to all *in forma pauperis*
11 proceedings, not just those filed by prisoners. *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th
12 Cir. 2000) (“section 1915(e) applies to all *in forma pauperis* complaints”). “It is also
13 clear that section 1915(e) not only permits but requires a district court to dismiss an in
14 forma pauperis complaint that fails to state a claim.” *Id.*

15 **B. Failure-to-State-a-Claim Standard**

16 To state a claim for relief under Rule 8, a plaintiff must make “‘a short and plain
17 statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the
18 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” *Bell*
19 *Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations omitted). This “short and
20 plain statement” must also be “plausible on its face.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937,
21 1949 (2009). A claim is plausible if it contains sufficient factual matter to permit a
22 reasonable inference that the defendant is liable for the conduct alleged. *Id.* A proper
23 complaint needs no “formulaic recitation of the elements of a cause of action,” *see*
24 *Twombly*, 550 U.S. at 555, but the complaint must at least contain “[f]actual allegations
25 [sufficient] to raise a right to relief above the speculative level,” *id.* All of the plaintiff’s
26 plausible factual allegations are accepted as true and the pleadings are construed in a light
27 most favorable to the plaintiff. *Knieval v. ESPN*, 393 F.3d 1068, 1072 (9th Cir. 2005).
28 Further, despite *Twombly* and *Iqbal*, courts continue to construe pro se filings liberally,

1 and give such plaintiffs “the benefit of any doubt.” *Hebbe v. Pliler*, 627 F.3d 338, 342
2 (9th Cir. 2010).

3 **II. BACKGROUND**

4 According to Wickenburg Police Department reports, a domestic violence dispute
5 took place in Wickenburg on Friday, November 20, 2009. One party to that dispute was
6 Tina Stotz; the other party was Lyle Stotz. Tina Stotz reportedly instigated the violence
7 and caused property damage. The Wickenburg police officer who responded to the
8 incident, Defendant Owen Black, observed Tina Stotz’s erratic behavior and eventually
9 arrested her for disorderly conduct and criminal damage. Later that day, Tina Stotz was
10 booked into a Maricopa County jail. The mug shot taken at booking reveals bruises on
11 her lower left face and chin.

12 Early the next morning (Saturday, November 21), Plaintiff Fugate received a call
13 from Tina Stotz. Stotz and Fugate had previously been in a romantic relationship, but by
14 this point, Stotz had a protective order against Fugate. Stotz nonetheless called Fugate
15 and asked him if she could stay at his place upon release from jail. Fugate agreed, on
16 condition that Stotz’s conditions of release specifically state that she must reside at
17 Fugate’s address. Fugate demanded this condition because he believed it would negate
18 any claim that he had violated the protective order against him. Stotz succeeded in
19 convincing the jail commissioner to require her to reside at Fugate’s address, and she was
20 released sometime in the pre-dawn hours on her own recognizance with a conditions-of-
21 release order listing Fugate’s address as the address at which Stotz must reside.

22 Later that morning, Stotz returned to the location of the previous day’s domestic
23 violence dispute, supposedly to gather her belongings. Another Wickenburg police
24 officer, Defendant Dan Webb, was dispatched to the location with a “civil standby”
25 assignment — *i.e.*, to ensure that further violence did not result from Stotz’s return.
26 Webb noted that Stotz had a small bruise on her left chin. She and Lyle Stotz did get into
27 a brief argument, but the incident required no intervention from Webb. When Webb saw
28 that Tina Stotz had collected her things, he advised her to leave. At that point, Stotz fell

1 to the ground, landed on her back, and became unresponsive. Webb began to call an
2 ambulance, but Stotz then picked herself up and left the scene.

3 Sometime the next day (Sunday, November 22), Stotz began residing in Fugate's
4 home. The following Wednesday (November 25), Defendant Webb was summoned to
5 Fugate's home in response to a domestic violence complaint from Stotz. Fugate was not
6 home, but Stotz was. Stotz told Webb that, since she moved into Fugate's home, Fugate
7 had beat her and raped her on more than one occasion. During the interview with Stotz,
8 Webb noticed that the bruise he had seen a few days earlier on Stotz's left chin had
9 grown larger. Stotz claimed that Fugate had hit her there.

10 Based on Webb's interview with Stotz, the Wickenburg Police Department began
11 a more formal investigation, including locating Fugate and bringing him to the police
12 station for questioning that afternoon. Defendant Lutkiewicz performed the
13 interrogation. Fugate denied beating Stotz and attributed Stotz's injuries to her own
14 erratic and drug-induced behavior, including punching herself and falling over. Fugate
15 admitted having sex with Stotz, but claimed that it was consensual and initiated by her.

16 During the interrogation, Lutkiewicz received a phone call from a forensic nurse
17 examiner at the Phoenix Advocacy Center, to which Stotz had been transported for a
18 physical examination. The nurse told Lutkiewicz that there were "no significant findings
19 in reference to the sexual assault." Nonetheless, Lutkiewicz had Fugate transported to a
20 Maricopa County jail and booked on two counts of domestic violence assault, three
21 counts of sexual assault, one count of interfering with judicial proceedings for disobeying
22 a restraining order, one count of kidnapping, and two counts of domestic violence
23 disorderly conduct. There is no record that Lutkiewicz obtained an arrest warrant before
24 sending Fugate to the county jail.

25 Fugate's initial arraignment took place at about 11:00 PM on the night of
26 November 25. At the arraignment, Fugate asserted that Stotz's mug shot from the
27 previous week would show that she already had bruises, and Stotz's conditions of release
28 would show that Fugate had not violated the protective order. The jail commissioner

1 quickly investigated these claims and agreed that Fugate presented a colorable defense,
2 but the crimes alleged did not permit the commissioner to release Fugate on his own
3 recognizance. The commissioner therefore set Fugate's bail at \$5,000.

4 By this point, Wednesday, November 25, had rolled into Thursday, November 26
5 — Thanksgiving Day. Unfortunately, all the bail bond agencies were too busy,
6 unwilling, or unable to help Fugate, so he spent all of Thanksgiving in jail. The next day,
7 he located a suitable bail bond agency and was released. A few days later, a Maricopa
8 county prosecutor concluded that there was no reasonable likelihood of convicting Fugate
9 on the charges against him, and the case was dropped. Fugate has since obtained a
10 protective order against Stotz, but the Wickenburg police officer assigned to deliver that
11 protective order, Defendant Brinkman, has yet to do so.

12 Wickenburg's local newspaper reported Fugate's arrest, the charges against him,
13 and the eventual dropping of those charges. Fugate's children have been taunted at
14 school with comments such as "your dad's a woman beater" and "your dad's a rapist."
15 Fugate's current girlfriend, who is the Wickenburg Municipal Court Administrator, has
16 also been subject to an investigation that Fugate believes is an attempt to discover
17 information that could be used to charge him with crimes.

18 Based on these alleged facts, Fugate alleges § 1983 causes of action against all
19 defendants. He argues that the Town of Wickenburg is liable for failure to train its
20 officers, and that all of the individual defendants knew or should have known that
21 Fugate's arrest was without probable cause because Stotz's accusations could not be
22 trusted in light of her erratic behavior observed by various officers in the days shortly
23 before Fugate's arrest.

24 **III. ANALYSIS**

25 **A. Individual Officers' Liability**

26 Fugate argues that he was arrested without probable cause, in violation of the
27 Fourth Amendment, causing him to spend two nights in jail unnecessarily. Lack of
28 probable cause exists where (a) a police officer did not have an arrest warrant, and

1 (b) facts and circumstances within the officer's knowledge were not enough to lead a
2 prudent person to believe that the person arrested had committed or was committing a
3 crime. *Hart v. Parks*, 450 F.3d 1059, 1065–66 (9th Cir. 2006).

4 Fugate primarily attacks the sexual assault charges made against him. Fugate
5 emphasizes that Lutkiewicz learned that a medical exam of Stotz revealed nothing
6 significant, but still charged Fugate with sexual assault anyway. He also generally
7 believes that the officers involved could not have reasonably credited Stotz's version of
8 events because they knew that she was an erratic, troubled person.

9 However, to arrest Fugate, the Wickenburg police officers needed probable cause
10 for only one crime. The Court concludes as a matter of law that sufficient facts and
11 circumstances within the officers' knowledge would have led a prudent person to believe
12 that Fugate had committed domestic violence assault. Although Webb noticed bruises on
13 Stotz's face before she accused Fugate of beating her, Webb also noticed that the bruises
14 had gotten bigger since last he saw her. In light of all the facts and circumstances —
15 including Webb's knowledge that Stotz had once lived with Fugate, and that she had
16 obtained a protective order against him — a prudent person could believe that Fugate had
17 assaulted Stotz. Accordingly, probable cause existed to arrest Fugate on at least a charge
18 of domestic violence assault.

19 Probable cause also existed to arrest Fugate on the interference with judicial
20 proceedings charge, related to the fact that housing Stotz was a violation of the protective
21 order against him. The Court need not resolve which takes precedence — the protective
22 order, or the later conditions-of-release the document requiring Stotz to live at Fugate's
23 house. The question is whether facts and circumstances existed that would lead a prudent
24 person to conclude that Fugate had violated the protective order. In this case, such facts
25 and circumstances obviously existed. It was not the police officers' duty to research the
26 complicated legal question raised by Stotz's conditions of release. Therefore, the
27 Wickenburg police had probable cause to arrest Fugate on the interference with judicial
28 proceedings charge.

1 Because the Wickenburg police had probable cause to arrest Fugate for at least
 2 two of the crimes alleged against him, the police permissibly took him into custody. As a
 3 matter of law, then, no constitutional violation occurred, and therefore no § 1983
 4 violation occurred. Accordingly, Fugate's claims against the individual police officers
 5 will be dismissed with prejudice.

6 **B. Failure to Train**

7 Fugate vaguely asserts a failure-to-train theory of § 1983 liability against the
 8 Town of Wickenburg:

9 [Wickenburg] knew or should have known that primarily due
 10 to The Lack of Supervision of the Wickenburg Police
 11 Department, the high turn-over of Police Officers and Chief's
 12 [sic] of Police while experiencing Extremely low morale and
 13 with an ongoing lack of communication between the Town of
 Wickenburg and the Wickenburg Police Department, The
 Plaintiff has suffered . . . intentional misrepresentation and
 concealment of material facts . . . [and] malfeasance,
 nonfeasance and Malicious Prosecution.

14 (Doc. 9 at 19–20.) The Court has already concluded that the Wickenburg police officers
 15 involved in Fugate's arrest did not violate the Constitution. Thus, no basis exists for a
 16 failure-to-train claim. But to the extent a failure-to-train claim might somehow persist,
 17 Fugate's accusations against Wickenburg itself do not meet the appropriate standard.
 18 That standard, as succinctly summarized in a recent Supreme Court opinion, requires
 19 deliberate indifference to the rights of crime suspects:

20 A municipality or other local government may be liable under
 21 [§ 1983] if the governmental body itself "subjects" a person
 22 to a deprivation of rights or "causes" a person "to be
 23 subjected" to such deprivation. But, under § 1983, local
 governments are responsible only for "their own illegal acts."
 They are not vicariously liable under § 1983 for their
 employees' actions.

24 Plaintiffs who seek to impose liability on local governments
 25 under § 1983 must prove that "action pursuant to official
 26 municipal policy" caused their injury. Official municipal
 27 policy includes the decisions of a government's lawmakers,
 28 the acts of its policymaking officials, and practices so
 persistent and widespread as to practically have the force of
 law. These are "action[s] for which the municipality is
 actually responsible."

1 In limited circumstances, a local government's decision not to
2 train certain employees about their legal duty to avoid
3 violating citizens' rights may rise to the level of an official
4 government policy for purposes of § 1983. A municipality's
5 culpability for a deprivation of rights is at its most tenuous
6 where a claim turns on a failure to train. To satisfy the
7 statute, a municipality's failure to train its employees in a
8 relevant respect must amount to "deliberate indifference to
9 the rights of persons with whom the [untrained employees]
10 come into contact." Only then "can such a shortcoming be
11 properly thought of as a city 'policy or custom' that is
12 actionable under § 1983.


13 "[D]eliberate indifference' is a stringent standard of fault,
14 requiring proof that a municipal actor disregarded a known or
15 obvious consequence of his action." Thus, when city
16 policymakers are on actual or constructive notice that a
17 particular omission in their training program causes city
18 employees to violate citizens' constitutional rights, the city
19 may be deemed deliberately indifferent if the policymakers
20 choose to retain that program.

21 *Connick v. Thompson*, 131 S. Ct. 1350, 1359–60 (2011) (citations omitted). Here, Fugate
22 has not alleged anything plausibly suggesting deliberate indifference on Wickenburg's
23 part. At best, Fugate seems to allege that the Wickenburg Police Department is generally
24 dysfunctional. Fugate has not alleged a specific lack of training that could have
25 prevented his arrest and jail time. And in any event, as stated previously, Fugate's arrest
26 and jail time did not result from a constitutional violation. Therefore, Fugate's claims
27 against the Town of Wickenburg will be dismissed with prejudice.

28 IT IS THEREFORE ORDERED that Plaintiff's "Amended' Complaint" (Doc. 9)
is DISMISSED. The Clerk will close this case.

IT IS FURTHER ORDERED that Plaintiff's "Motion to Appoint Pro Bono
Council [*sic*]" (Doc. 8) is DENIED as moot.

Dated this 10th day of May, 2011.

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26 Neil V. Wake
27 United States District Judge
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